



HAGENS BERMAN

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January 8, 2016

The Honorable Charles R. Breyer
 United States District Court, Northern District of California

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 15-md-02672-CRB, Lead Counsel Application

Dear Judge Breyer:

My name is Steve Berman, and I am the managing partner of Hagens Berman. I seek appointment as lead or co-lead counsel. I filed the first VW case and did so in this District. I have since filed six more cases with 196 plaintiffs from the 50 states and D.C. We represent over 8,350 VW owners, and well over 17,300 VW owners have contacted or asked us to represent them. Tens-of-thousands of owners regularly visit the online VW owners' hub that our firm created.

No firm has done what we have done for VW owners. We authored and sent a damages survey to clients, asking *them* what would be a fair resolution. With over 3,260 responses, we have unmatched insight into what the Class thinks is fair. We were the first to file a California emissions warranty buyback case and the first to seek a nationwide buyback injunction. We have extensively investigated the defeat device and the possible fixes; retained the leading experts for emissions testing, including a 30-year veteran of EPA and CARB who was the director of CARB's emissions regulations program for 25 years; and exclusively retained the leading expert on economic loss in auto-defect cases. Quinn Emanuel, which has pledged to support our litigation team, provides the largest German-based legal presence of any firm, with 27 lawyers in Germany available to work on this matter. We have unique resources and experience to handle trial of this case if necessary, and we are uniquely prepared to begin settlement discussions tomorrow.

As leaders, our commitment to excellence, professionalism, and high ethical standards make life easier for the parties and the court in complex, hard-fought litigation. This Court recognized these attributes in the *Bextra & Celebrex* litigation, where I served on the Plaintiffs' Steering Committee. More importantly, business interests, politicians, and even many distinguished jurists have lamented class action results where class members receive pennies after onerous claims processes, while class action lawyers get millions. I have a reputation for bucking that trend. In the *AWP* cases, class members received three-fold their losses; in *E-Books*, class members will get a 100-200% recovery; in the *Schwab Yield Plus* litigation, securities class members received 42% of federal law and 82% of state law damages. In the *Toyota Sudden Unintended Acceleration ("SUA")* case I refused a settlement offer exceeding \$1 billion until Toyota agreed to fix what I perceived to be a dangerous and life-threatening defect. Toyota capitulated. I have a rule in my firm that we will not agree to a claim form settlement unless there is no other way to distribute proceeds.

(1)-(2) Experience in complex litigation as lead or liaison counsel and/or on committees.

We were named to the *National Law Journal's* 2015 list of Elite Trial Lawyers specifically for our work in automotive class actions and made the *NLJ* Plaintiffs' "Hot List" eight of the last nine years. We have been appointed lead or co-lead in many of the largest consumer fraud, product liability, securities, and antitrust cases in history. Our innovative MDL track record includes:

- *GM Ignition Switch* (SDNY). I am co-lead counsel and trial counsel in this complex auto defect case proceeding in bankruptcy and district court. Judge Furman appointed me interim lead *sua sponte*, and then made that appointment permanent upon review of my experience and qualifications. For the next 2 weeks, I will be in trial in the first bellwether *GM* trial.
- *Toyota SUA* (C.D. Cal.). As co-lead counsel for the economic loss classes, we challenged a defect causing sudden, unintended acceleration. The resulting \$1.6 billion settlement included \$500 million in cash payments to class members; a program that substantially extended warranties;

and, most importantly, installation of a safety-enhancing brake override system on millions of vehicles. This fix that I proposed and would not agree to settle without, since implementation, has dropped reports of SUA to near zero.

- *Hyundai/KIA Fuel Economy* (C.D. Cal.). As settlement counsel, we championed a suit over Hyundai's manipulation of tests to increase MPG ratings of almost one million cars. Hyundai admitted error and offered actual losses, plus a 15% inconvenience fee. We identified major gaps in the program, investigated errors at the Korean facility, secured approval of a settlement that added a lump-sum option (which was selected over the defendants' existing offer nine out of 10 times), and expanded the benefit class. The settlement provides \$360 million for the class.
- *E-Books Antitrust* (S.D.N.Y.). We pioneered this litigation against Apple and brick-and-mortar publishers for antitrust violations. We represent purchasers of e-books in 19 states and four U.S. territories and worked in novel partnership with the DOJ and 33 state Attorneys General. Contingent on the Supreme Court's response to Apple's appeal, the proposed settlement will provide up to \$560 million to end price-fixing allegations, on damages of \$270 million.
- *McKesson* (D. Mass.). As co-lead we pioneered racketeering cases alleging a conspiracy to increase prices on brand-name drugs. After certification, the case settled for \$350 million and a roll-back of drug prices. Follow-on litigation by regulators netted another \$500 million. The states we represented obtained settlements three to nine times higher than other states.
- *AWP* (D. Mass.). As co-lead and lead trial counsel, we proved that drug companies fraudulently inflated prices by billions of dollars. A bellwether trial returned a verdict against defendants, and resulted in \$338 million in settlements, with consumers getting three fold actual damages.
- *Attorneys General Tobacco Litigation*. We represented 13 states with groundbreaking legal claims to secure a global settlement worth \$260 billion, still the largest recovery in history. Only one other firm went to trial in these actions, and I served as co-lead trial counsel.

I am the only lawyer in the country appointed to co-lead the economic loss cases in the two largest automobile defect cases in the United States—*Toyota* and *GM*. In each case, the initial appointment was made *sua sponte*, highlighting our reputation and proven abilities. I encourage the Court to contact Judge Selna and Judge Furman for their informed opinions of the expertise and efficiencies that we brought to those actions. My firm and I also led resolution of the *Hyundai/Kia EPA Litigation*, resulting in a proposed settlement of EPA fraud allegations for \$360 million.

(3) Willingness and ability to immediately commit to time-consuming litigation.

As a result of leading *Toyota*, *GM*, and *Hyundai/Kia*, we have lived and breathed automotive economic loss cases on a daily basis for the last seven years. More than any other firm, my firm's resources are focused on the myriad legal and factual issues involved in an economic loss auto-defect case. This expertise allowed us to file the first Volkswagen emissions case, the first case with representative plaintiffs from all 50 states and D.C., and the first cases seeking buybacks.

We settle only when an automaker offers genuine relief to consumers. We look to make our clients whole, not ourselves. Our track record and reputation proves it. And, unlike many class action firms, we also take complex cases to trial. I did so in *Tobacco*, in the three-month *AWP* trial, and I am doing it in *GM* now. As lead, I do not delegate the trench-work solely to others: I was in Toyota's code-vault for weeks reviewing source code for errors. I personally review all coded hot documents each week in every case. I know every case I lead from the bottom up and this gives me settlement and trial insight that other firm leaders simply do not take the time to acquire.

(4) Willingness and ability to work cooperatively with plaintiffs' and defense counsel.

As courts have recognized, I have worked effectively for over two decades with many of our colleague firms when occupying a leadership position in landmark cases. In *Toyota* and *GM* I worked (and am working) closely with co-lead counsel and committee members. Many of my colleagues in leadership roles in those cases are applying for leadership roles here. I also worked with special settlement counsel in *Toyota*. That excellent working relationship, based on trust and

mutual respect, was a key ingredient in achieving settlement. My relationship with defense counsel in *Hyundai/Kia* led not only to an excellent settlement, but also led opposing counsel in that case, Quinn Emanuel, to offer its resources and support my leadership role in this litigation.

(5) Access to resources to prosecute the litigation in a timely manner.

We have substantial, national litigation resources that include over 75 firm lawyers in ten offices, aided by dozens of contract attorneys. Because we are prudent managers, we have the ability to fund litigation costs over many years of litigation and trial, often alone. We do not cut-and-run from cases, as several firms did in *Toyota* when the odds looked long. Instead, we re-doubled our efforts to great success, managing a large executive committee while watching costs and fees.

(6)-(7) Willingness to serve as lead counsel, a member of a steering committee, or both; and the particular categories of plaintiffs the applicant wants to represent.

I would like to serve as lead or co-lead counsel. Should the Court chose others to be lead, I am willing to serve on a committee. I would be honored to represent any class of plaintiffs. We presently represent over 8,350 CleanDiesel owners in all 50 states and the District of Columbia.

(8) Other considerations that qualify counsel for a leadership position.

Another consideration qualifying me for a leadership position is my complete focus on litigating cases on behalf of plaintiffs in large class action cases—to great success. I do not spend my time serving on bar committees or teaching classes at law schools. I do not generally publish or accept most invitations to speak. I wake up each day and review hot documents and draft pleadings. I work on cases like this because it's what I enjoy most. And that focus, however myopic to some, makes a difference to those I work with and my clients. Moreover, it makes me personally accountable to the court.

I also have unique experience with parallel DOJ proceedings (most recently *E-Books*) and parallel state Attorneys General proceedings. I prosecuted cases on behalf of 13 states in *Tobacco*, five states in *AWP*, and five states in *McKesson*. This gives me strong relationships with Attorneys General, consumer protection advocates, and regulators throughout the United States.

I have reviewed Mr. Frank's *Amicus* brief advocating competitive bidding. I have been appointed lead through competitive bidding processes (including in *E-Books* and *Optical Disc Drives*), but defer to the Court as to whether such a process is helpful here. I agree that this case is not typical because VW has essentially admitted liability. This suggests an early focus on settlement may be fruitful. Moreover, VW's admissions warrant a fee structure that recognizes the reduced risk in this case. If selected to a leadership post in this case, I will commit in advance to a fee structure that recognizes that reduce risk. In my opinion, any attorney appointed to a leadership position in this case must understand that the Ninth Circuit benchmark fee of 25% will be excessive here in the event of early settlement. I have employed substantial cost and fee containment measures in every case in which my firm has participated. In the *Resistors Antitrust* litigation before Judge Whyte, our fee and cost containment proposal was an important factor in the Court's decision to appoint us.

In *Toyota* and *GM*, I have personally attended every hearing and status conference. If selected as a lead counsel in this case, I will do the same, with one exception: I will likely miss the hearing on this appointment process due to the *GM* trial, which starts January 11, 2016. My partner, Rob Carey, will be present for our firm. As I did in *Toyota* and *Hyundai/Kia*, as I am doing in *GM*, and as I've done in dozens of cases throughout my career, if appointed lead counsel I will work tirelessly to secure an outstanding result for the Class.

Respectfully,

HAGENS BERMAN SOBOL SHAPIRO LLP


Steve W. Berman



Resume of Steve W. Berman

Education:

University of Chicago Law School, J.D., 1980
 University of Michigan, B.A., 1976

Biography:

Steve Berman served as co-lead counsel for the largest settlement in history (Big Tobacco), the largest automotive settlement (Toyota), the largest antitrust settlement (Visa/Mastercard), the largest ERISA settlement (Enron) and, at the time, the largest U.S. securities settlement (WPPSS).

Mr. Berman represents consumers, investors and employees in large, complex litigation held in state and federal courts. Berman's trial experience has earned him significant recognition and led The National Law Journal to name him one of the 100 most powerful lawyers in the nation, and to repeatedly name Hagens Berman one of the top 10 plaintiffs' firms in the country. In fact, Hagens Berman was named to the NLJ's inaugural 2015 list of Elite Trial Lawyers, specifically for its Automotive Class Actions practice. Mr. Berman is considered one of the nation's most successful class-action attorneys, and has been praised for securing record-breaking settlements and tangible benefits for class members.

Leadership and Committee Roles in Notable Cases:

Steve Berman and Hagens Berman have been appointed to leadership roles in dozens of MDL and non-MDL class cases. Courts with in-depth knowledge of Mr. Berman's qualifications for a leadership role in this case include, *inter alia*: Judge Selna, (714)-338-2848, Judge Furman, (212) 805-0282, Judge Alsup, (415) 522-3684, Judge Wilken, (510) 637-1296, Judge Saris, (617) 748-9175 and Judge Lee, (312) 435-5769. In addition, nationally recognized mediators are familiar with Mr. Berman's qualifications, including Ret. Judge Wayne R. Anderson, (312) 655-0555, Ret. Judge Layn Phillips, (949) 760-5280, and Ret. Judge Daniel Weinstein, (415) 982-5267. The table below lists the most notable recent leadership appointments for Steve Berman and Hagens Berman; a complete list could not be provided within the Court's page limitation for this resume.

Case No. & Name	Leadership Position	Judicial Contact
10-md-2151-JVS (C.D. Cal.) <i>In re: Toyota Motor Unintended Acceleration</i>	Co-Lead Economic Loss Cases	Hon. James V. Selna (714) 338-2848
14-md-2543-JMF (S.D.N.Y.) <i>In re: General Motors Ignition Switch Litig.</i>	Co-Lead	Hon. Jesse M. Furman (212) 805-0282
13-md-02424-GW-FFM (C.D. Cal.) <i>In re: Hyundai and Kia Fuel Economy Litig.</i>	Settlement Class Counsel	Hon. George Wu (213) 894-0191
05-cv-11548-PBS (D. Mass.) <i>NE Carpenters, et al. v. McKesson Corp. et al.</i>	Co-Lead	Hon. Patti B. Saris (617) 748-9175
08-cv-1510-WHA (N.D. Cal.) <i>In re: Charles Schwab Corp. Securities Litigation</i>	Lead	Hon. William H. Alsup (415) 522-3684
14-md-2541-CW (N.D. Cal.) <i>In re: NCAA Grant-in-Aid Cap Antitrust Litig.</i>	Co-Lead (2 classes) Interim Co-Lead	Hon. Claudia Wilken (510) 637-1296
09-cv-03329-CW (N.D. Cal.) <i>O'Bannon v. National Collegiate Athletic Assn.</i>	Co-Lead for Class Plaintiffs	Hon. Claudia Wilken (510) 637-1296
09-cv-01967-CW (N.D. Cal.) <i>In re: NCAA Student-Athlete Name & Likeness</i>	Co-Lead for Class Plaintiffs	Hon. Claudia Wilken (510) 637-1296
15-cv-03820-RMW (N.D. Cal.) <i>In re: Resistors Antitrust Litig.</i>	Co-Lead for Direct Purchaser Class	Hon. Ronald Whyte (408) 535-5375
05-md-1699-CRB (N.D. Cal.) <i>In re: Bextra and Celebrex</i>	Plaintiffs' Steering Committee	Hon. Charles R. Breyer (415) 522-2062

Case No. & Name	Leadership Position	Judicial Contact
13-md-2492-JZL (N.D. Ill.) <i>In re: NCAA Student-Athlete Concussion Injury</i>	Co-Lead	Hon. John Z. Lee (312) 435-5769
13-cv-3072-EMC (N.D. Cal.) <i>In re: MyFord Touch Consumer Litig.</i>	Co-Lead	Hon. Edward M. Chen (415) 522-2034
12-md-2330-EMC (N.D. Cal.) <i>In re: Carrier IQ, Inc., Consumer Privacy Litig.</i>	Co-Lead	Hon. Edward M. Chen (415) 522-2034
11-md-2293-DLC (S.D.N.Y.) <i>In re: Electronic Books Antitrust Litig.</i>	Co-Lead for Class Plaintiffs	Hon. Denise L. Cote (212) 805-0097
01-md-1456-PBS (D. Mass.) <i>In re: Pharm. Ind. Avg. Wholesale Price ("AWP")</i>	Lead Trial Counsel Co-Lead	Hon. Patti B. Saris (617) 748-9175
08-cv-10843-PBS (D. Mass.) <i>In re: McKesson Govt. Entities AWP</i>	Co-Lead	Hon. Patti B. Saris (617) 748-9175
13-md-2455-MS (N.D. Ill.) <i>In re: Stericycle, Inc., Steri-Safe Contract Litig.</i>	Lead	Hon. Milton Shadur (312) 435-5766
15-md-02627-AJT (E.D.VA.) <i>In re: Lumber Liquidators Flooring Products Litig.</i>	Co-Lead	Hon. Anthony J. Trenga (703) 299-2113
96-cv-5238-JG (E.D.N.Y.) <i>In re: Visa Check/MasterMoney Antitrust Litig.</i>	Co-Lead	Hon. John Gleeson (718) 613-2455
13-md-02420-YGR (N.D. Cal.) <i>In re: Lithium Ion Batteries Antitrust Litig.</i>	Co-Lead for Indirect Purchaser Class	Hon. Yvonne Gonzalez Rogers (510) 637-4010
10-md-02143-RS (N.D. Cal.) <i>In re: Optical Disk Drive Products Antitrust Litig.</i>	Lead for Indirect Purchaser Class	Hon. Richard Seeborg (415) 522-2123
13-md-2428-DPW (D. Mass.) <i>In re: Fresenius Granuflo/Naturalyte</i>	Plaintiffs' Executive Committee	Hon. Douglas P. Woodlock (617) 748-9170
08-md-01919-MJP (W.D. Wash.) <i>In re: Wash. Mut., Inc. Secs., Derivative & ERISA</i>	Co-Lead ERISA Counsel	Hon. Marsha J. Pechman (206) 370-8820
01-cv-3913-MSH (S.D. Tex.) <i>Tittle, et al. v. Enron Corp.</i>	Co-Lead ERISA Counsel	Hon. Melinda S. Harmon (713) 370-8820
14-cv-4062-LHK (N.D. Cal.) <i>In re: Animation Workers Antitrust Litig.</i>	Co-Lead for Class Plaintiffs	Hon. Lucy H. Koh (408) 535-5346
04-cv-00025-FVS (W.D. Wash.) <i>In re: Metropolitan Securities Litig.</i>	Lead	Hon. Fred Van Sickle (ret.) (509) 458-5250
08-cv-10261-PGG (S.D.N.Y.) <i>In re: Reserve Fund Sec. and Derivative Litig.</i>	Lead	Hon. Paul G. Gardephe (212) 805-0224
11-cv-0804-VM (S.D.N.Y.) <i>In re: China MediaExpress Securities Litig.</i>	Lead	Hon. Victor Marrero (212) 805-6374
JCP4648 (San Mateo Sup. Ct.) <i>In re: PG&E Derivative Litig.</i>	Co-Lead	Hon. Steven Dylina (650) 261-5107



HAGENS BERMAN

Counsel Who Support Steve Berman's Appointment as Lead Counsel

I did not engage in a campaign of soliciting support from other counsel with cases in this MDL. Rather, I list below the firms that have reached out to me and indicated that they will support my application for lead. Likewise, I have indicated to several prominent lawyers that I will support their application for a lead or committee position in this case, not because they in-return support my application, but rather because I believe that their involvement will be a benefit to the Class and the Court in securing a prompt and fair resolution of this case.

Counsel in Support of the Application of Steve Berman for Lead:

Elizabeth Cabraser—Leiff Cabraser Heimann & Bernstein, LLP

Frank Pitre—Cochett Pitre & McCarthy LLP

Eric Gibbs—Girard Gibbs LLP

Blair Nicholas—Bernstein Litowitz Berger & Grossmann LLP

Roland Tellis—Baron & Budd, P.C.

Marc Robinson—Robinson Calcagnie Robinson Shapiro Davis, Inc.

Timothy Blood—Blood Hurst & O'Reardon LLP

Robert Hilliard—Hilliard Muñoz Gonzales LLP

John Quinn—Quinn Emanuel Urquhart & Sullivan, LLP

Paul Geller—Robins Geller Rudman & Dowd LLP

Christopher Seeger—Seeger Weiss LLP

James Cecchi—Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.

Jordan Lurie—Capstone Law, APC

Jeffrey S. Goldenberg—Goldenberg Schneider, LPA

Chris Jenkins—Minnillo & Jenkins, CO., LPA

Benjamin Bailey—Bailey Glasser LLP

Robert Rymek—Business Lawyers Group